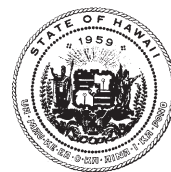

Study of the Higher Education Act

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 12-11
December 2012



THE AUDITOR
STATE OF HAWAI'I

Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawai'i State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

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1. Financial audits attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. Management audits, which are also referred to as performance audits, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called program audits, when they focus on whether programs are attaining the objectives and results expected of them, and operations audits, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. Sunset evaluations evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
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Hawai'i's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



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State Auditor
State of Hawai'i

**In FY2011,
postsecondary
education schools
in Hawai'i disbursed
more than \$283
million in Title IV
program funds to
roughly 63,000
students.**

Recommendations

Responses

For the full text of this and other reports, visit our website:
<http://www.state.hi.us/auditor>

Study of the Higher Education Act

Report No. 12-11, December 2012

State authorization entity is needed to ensure federal student aid funds are available to postsecondary schools in Hawai'i.

University of Hawai'i is the best option to house a postsecondary education authorization entity

Act 132, Session Laws of Hawai'i 2012 asked the Auditor to examine the federal Higher Education Act (HEA) of 1965 and its accompanying federal requirements and recommend the best available options, including a regulatory framework, to ensure the State's compliance with provisions regarding authorizing institutions that offer postsecondary education programs in Hawai'i. Such a framework is necessary to preserve the availability of federal student aid funding under Title IV of the HEA. In 1974, a State Postsecondary Commission was established by the Legislature to qualify the State to receive Title IV funds. Federal regulations now require eligible educational institutions to obtain authorization from the State to offer postsecondary education programs in Hawai'i in order to participate in Title IV programs.

The State Postsecondary Commission, administratively attached to the University of Hawai'i, is not currently empowered to grant authorization. However, amendments to existing state law could empower the commission with authorization ability and alter its makeup so that its majority is no longer comprised of members of the university's Board of Regents. Altering the composition could allay conflict of interest concerns and ensure students have a third party entity—the commission—with which to file and pursue complaints against a particular educational institution. State statutes and accompanying administrative rules provide a framework on which lawmakers and the commission could build. The University of Hawai'i also has an in-house base of postsecondary education expertise, which gives it an added advantage over other state agency options that were considered in the report.

Other agencies lack expertise or program commitment

The Department of Commerce and Consumer Affairs (DCCA) is responsible for more than 20 professional boards and commissions; however, the only educational institutions it regulates are beauty schools. State law also requires all licensing programs within DCCA to be self-supporting, which means fees for postsecondary authorization regulation must cover the costs of the regulatory program. The department estimates the start-up costs per institution may range from \$2,800 to \$8,500, with an annual renewal cost of \$2,700 to \$8,100. These estimates could change once a bill is drafted and the details of a proposed regulatory program are revealed.

Pursuant to state law, the Department of Education (DOE) licenses private trade, vocational, and technical schools in Hawai'i. However, deficiencies in staffing and commitment to the licensing program identified by our office ten years ago continue to persist. Staff who administer the program have limited experience with postsecondary education matters, and a lack of resources hinders the program's ability to adhere to all administrative rules and address all complaints. These factors raise concerns about the DOE's ability to effectively meet additional responsibilities that would be required to support a state postsecondary authorization entity.

Agencies' responses

The Department of Commerce and Consumer Affairs and the Department of Education supported our conclusions and recommendations. The University of Hawai'i raised concerns about its ability to implement our primary recommendation to house Hawai'i's authorizing entity within the existing State Postsecondary Education Commission attached to the university, and about our specific recommendation regarding mitigating possible conflict of interest concerns.

Study of the Higher Education Act

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Submitted by

THE AUDITOR
STATE OF HAWAI'I

Report No. 12-11
December 2012

Foreword

This is a report on our study of the federal Higher Education Act of 1965 pursuant to Act 132, Session Laws of Hawai‘i 2012. As requested by the Legislature, we examined the act and its accompanying requirements and recommend a possible regulatory framework to ensure the State’s compliance with federal provisions regarding authorizing institutions that offer post-secondary educational programs in Hawai‘i. Such a framework is necessary to preserve the availability of federal student aid funds in Hawai‘i.

We wish to express our appreciation for the cooperation and assistance of the staff of the Department of Commerce and Consumer Affairs, the Department of Education, the University of Hawai‘i, and other organizations and individuals whom we contacted during the course of this study.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

This study of the federal Higher Education Act of 1965, as amended, and its regulations was conducted pursuant to Act 132, Session Laws of Hawai'i (SLH) 2012. The act requested that the Auditor examine and recommend a possible regulatory framework to ensure the State's compliance with provisions relating to the authorization of institutions that offer educational programs beyond secondary education.

Background

Higher Education Act of 1965

The Higher Education Act (HEA) was enacted in 1965 “to strengthen the educational resources of our colleges and universities and to provide financial assistance for students in postsecondary and higher education.” In his 1965 education message, President Lyndon Johnson articulated the need for more higher-education opportunities for lower- and middle-income families, program assistance for small and less-developed colleges, additional and improved library resources at higher education institutions, and utilization of college and university resources to deal with problems such as poverty and community development. The HEA was a response to that message.

Types of federal student aid

Federal student aid programs are authorized under Title IV of the HEA. These programs are administered by the Federal Student Aid office of the U.S. Department of Education (U.S. DOE). The office ensures all eligible individuals can benefit from federally funded financial assistance for education beyond high school. It plays a central and essential role in supporting postsecondary education by providing money for college to eligible students and families. In managing Title IV grants, loans, and work-study programs, Federal Student Aid ensures the accessibility, affordability, and accountability of higher education to better prepare students and adults for employment and future learning. The HEA Title IV programs include federal grants, loans, and work-study programs.

Federal student aid grants

There are a number of types of federal student aid grants. They are:

- **Federal Pell Grants**, which is the most need-based student aid program. Pell grants are provided to low- and middle-income undergraduate students;

- **Federal Supplemental Educational Opportunity Grants (FSEOG)**, through which participating schools award grants to undergraduate students with exceptional financial need, based on the availability of funds;
- **Teacher Education Assistance for College and Higher Education Grants (TEACH)**, which provides grants to students who are completing, or who plan to complete, coursework needed to begin a career in teaching;
- **Iraq and Afghanistan Service Grants**, which are available to students who are not eligible for a Pell grant only because of that program's need requirements and whose parent or guardian died as a result of military service in Iraq or Afghanistan after September 11, 2001; and
- **Leveraging Educational Assistance Partnership (LEAP) and Special LEAP (SLEAP) Grants**, which are formula-based programs that make federal funds available to states to help provide student assistance programs for individuals with substantial financial need.

Federal student aid loans

There are two types of federal student aid loans:

- Under the **Direct Loan Program**, funds are loaned directly to students for undergraduate and graduate studies through participating postsecondary schools. Direct loans include *subsidized loans* and *unsubsidized loans*; *PLUS loans* for parents and graduate or professional degree students; and *consolidation loans*, which allow borrowers to combine federal education loan debts; and
- **Federal Perkins Loans**, which are made available through participating schools to undergraduate, graduate, and professional students demonstrating the greatest financial need.

Federal student aid work-study

Work-study programs provide part-time employment for students while they are enrolled in school. Students are paid directly for their work and schools are responsible for administering the program.

State authorization requirement under the HEA

The Higher Education Act of 1965 requires institutions to have approval from each state in which they provide postsecondary educational programs. The U.S. DOE historically viewed the requirements for state authorization as minimal and considered entities that had been exempted from state oversight to have such approval as long as they were able to operate within their state. In some states, an institution was considered legally authorized to offer postsecondary education based on criteria such as a business license. However, the U.S. DOE now believes a better approach is to view state approval as a *substantive requirement*, meaning states are expected to take an active role in approving institutions, monitoring complaints about operations, and responding appropriately. One of the purposes for requiring institutions to obtain state authorization is the protection of students.

One indicator of the importance of state oversight has been the movement of substandard institutions and so-called “diploma mills” from state to state in response to changing requirements. Such entities establish themselves in states that provide very little oversight and operate there until those states strengthen their oversight in response to complaints from the public. In 2010, federal regulations were established to clarify the statutory requirement that an institution must be legally authorized in a state. *Legally authorized* is the legal status granted to an institution through a charter, license, or other written document issued by an appropriate agency or official of the state in which the institution is physically located.

Hawai‘i’s legislative actions

In 1974 the Legislature established the State Postsecondary Education Commission to qualify the State to receive funds made available pursuant to 1972 amendments to the HEA. The 1974 law placed the commission within the University of Hawai‘i for administrative purposes. Membership of the commission included the University of Hawai‘i Board of Regents, plus four other members representing the general public as well as public and private nonprofit and proprietary postsecondary education institutions.

In 1994, new federal regulations required states to designate a State Postsecondary Review Entry body to conduct or coordinate reviews of higher education institutions to determine whether those institutions should continue to participate in Title IV programs. The purpose of the State Postsecondary Review Program was to reduce fraud and abuse in the federal student assistance programs through state oversight of institutions that participate in a Title IV HEA program. In response, the 1994 Legislature established the Hawai‘i State Postsecondary Review Program, and authorized the existing postsecondary commission to carry out the new program. The purpose of the program was to ensure that institutions taking part in Title IV student financial aid programs

were meeting appropriate standards of educational quality and integrity by increasing the accountability of those institutions through expanded state oversight. The postsecondary commission was also empowered to establish and administer procedures for receiving and responding to complaints from students, faculty, and others regarding institutions of higher education in Hawai‘i.

In 1996, the U.S. DOE deleted the federal regulation requiring a State Postsecondary Review Program. However, as part of a broader action to improve the organizational framework for statutes related to higher education and the University of Hawai‘i, the 2006 Legislature chose to retain the statute establishing Hawai‘i’s postsecondary commission but repealed the law regarding the review program.

In 2010, the U.S. DOE set a July 2011 deadline for institutions to comply with the requirement that states authorize postsecondary institutions. However, it recognized that states might be unable to provide authorizations by that date, so provided a means for institutions to be granted an authorization extension to as late as July 1, 2013. In Act 132, SLH 2012—the act which requested this study—the Legislature noted that the State Postsecondary Education Commission is not empowered to authorize institutions to offer postsecondary programs in Hawai‘i. It added that Act 132 demonstrated a good faith attempt to begin meeting the federal requirements by determining what actions and changes were required for the State to achieve compliance.

Exhibit 1.1 shows the number of postsecondary schools in Hawai‘i that participated in Title IV programs (loans, grants, and work-study) as well as the number of fund recipients and the amount of Title IV disbursements for FY2011. Roughly 63,000 students in Hawai‘i received more than \$283 million in Title IV funds in FY2011—about \$4,500 per student.

Exhibit 1.1
Hawai‘i Title IV Program Participation, FY2011

Number of Hawai‘i postsecondary schools participating in Title IV programs			Number of Title IV program recipients in Hawai‘i	Amount of Title IV disbursements in Hawai‘i
Three programs	Two programs	One program		
11 (9 public; 2 private)	19 (10 public; 6 proprietary; 3 private)	5 (4 private; 1 proprietary)	63,279	\$283,646,517

Source: Federal Student Aid Data Center

Relevant state agencies

Several state agencies have statutory duties involving either licensing schools that offer postsecondary education programs or play a role with the State Postsecondary Education Commission. These agencies are described below.

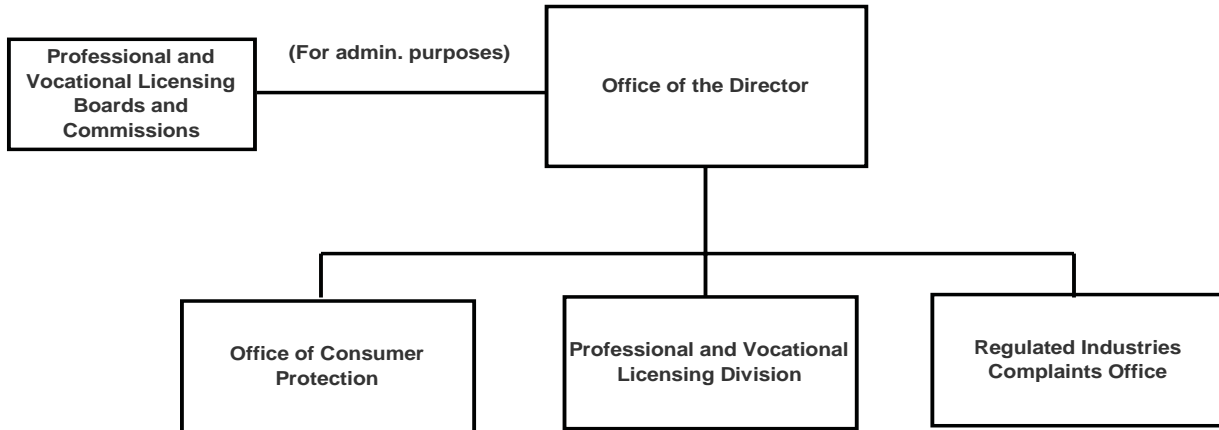
Department of Commerce and Consumer Affairs

Under Section 26-9, Hawai‘i Revised Statutes (HRS), one of the purposes of the Department of Commerce and Consumer Affairs (DCCA) is to “protect the interests of consumers, depositors, and investors throughout the State.” The department is also empowered to set standards and enforce all laws and rules governing the licensing and operation, and to register and supervise the conduct, of trades, businesses, and professions.

The department is made up of 12 divisions and offices. Exhibit 1.2 shows the organizational structure of relevant portions of the department, including:

- **Professional and Vocational Licensing Division (PVL)**, which oversees the regulatory activities of 25 boards and commissions and more than 20 other licensing programs. The division licenses 47 different professions and vocations in total;
- **Regulated Industries Complaints Office (RICO)**, which is the enforcement arm of the boards and programs under PVL. The RICO investigates and prosecutes complaints against PVL licensees and protects the public from unlicensed activities; and
- **Office of Consumer Protection (OCP)**, which investigates consumer complaints of unfair or deceptive trade practices in advertising, refunds, motor vehicle rentals, door-to-door sales, credit practices, and charitable solicitation. The OCP was created in 1969 to protect the interests of consumers and legitimate businesses. Its primary purpose is to promote fair and honest business practices by investigating alleged violations of consumer protection laws and taking legal steps to stop unfair or deceptive practices in the marketplace.

Exhibit 1.2
Department of Commerce and Consumer Affairs Organization Chart



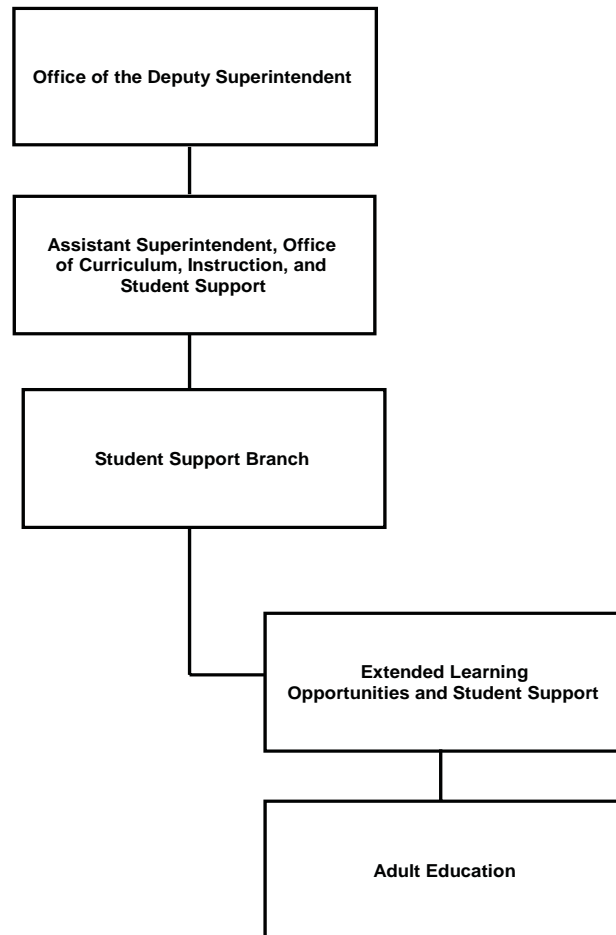
Sources: Department of Commerce and Consumer Affairs and Office of the Auditor

Under Chapter 439, HRS, the Board of Barbering and Cosmetology, which is attached to DCCA, licenses beauty schools. According to the PVL licensing administrator, beauty schools are the only educational institutions the department regulates. In 2012, there were 11 licensed beauty schools in Hawai‘i.

Department of Education

Section 302A-425, HRS, forbids any private trade, vocational, or technical school from operating in Hawai‘i unless it receives a license issued by the Department of Education (DOE). The purpose of such licensing and regulation is to protect consumers against practices by private trade, vocational, or technical schools that are false, deceptive, misleading, or unfair, and to help ensure educational quality at such schools.

The DOE’s licensing function is performed through its Adult Education Program under the Extended Learning Opportunities and Student Support Section. The section falls within the Student Support Branch of the Office of Curriculum, Instruction, and Student Support. Exhibit 1.3 shows the relevant organizational structure within the DOE.

Exhibit 1.3**Department of Education, Office of Curriculum, Instruction and Student Support
Organization Chart**

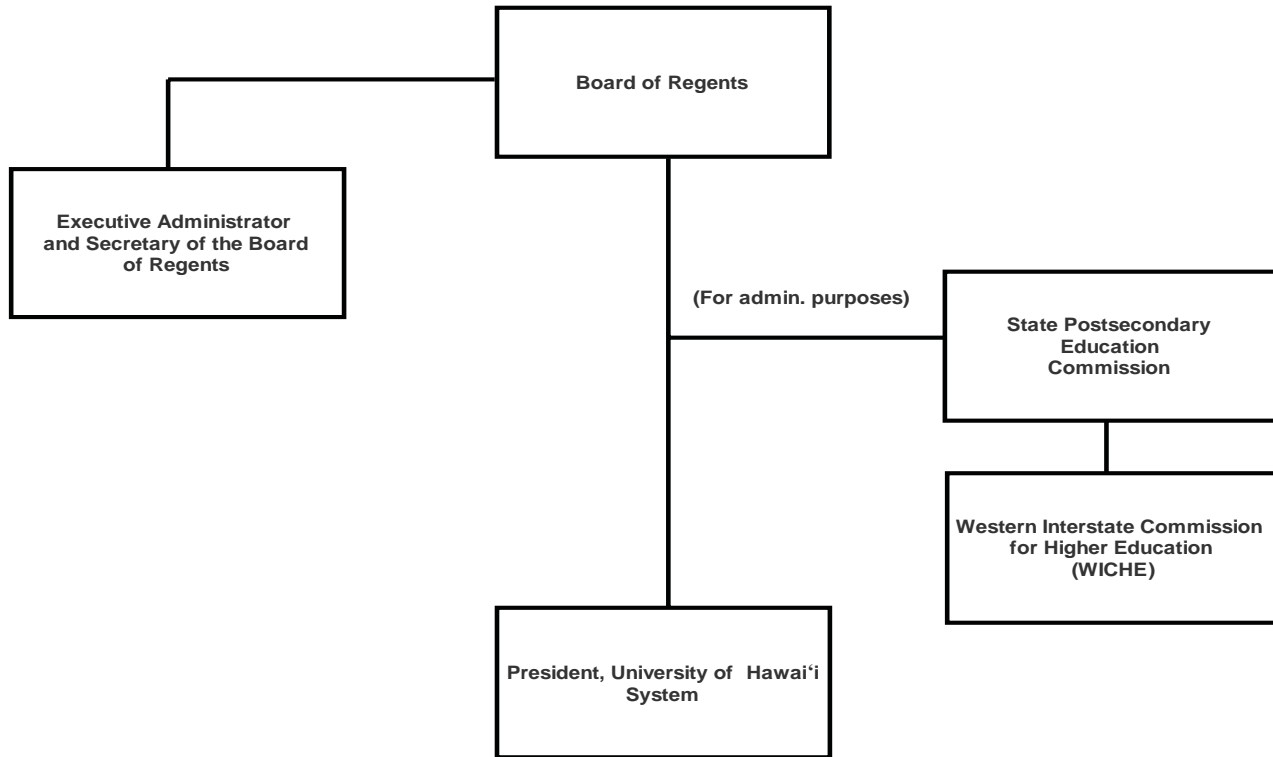
Sources: Department of Education and Office of the Auditor

Section 302A-101, HRS, lists eight categories of schools and courses of instruction that are not required to be licensed by the department, including schools registered by DCCA or by boards and commissions administratively attached to DCCA. The DOE has issued licenses to 26 schools, which are valid until 2013.

University of Hawai‘i

The State Postsecondary Education Commission is established under Section 304A-3151, HRS. Exhibit 1.4 shows the relevant portion of the university’s organization chart, illustrating how the commission is attached to the university.

Exhibit 1.4
University of Hawai'i, State Postsecondary Education Commission Organization Chart



Sources: University of Hawai'i and Office of the Auditor

Objectives of the Study

1. Review and assess key components of other states' authorization models.
2. Identify state agencies that license, regulate, or authorize Title IV eligible institutions in Hawai'i and evaluate their suitability to house an authorization entity as federally required.
3. Make recommendations as appropriate.

Scope and Methodology

Using federal criteria applicable to state authorization and to Title IV funding eligibility, we identified state agencies responsible for licensing institutions eligible to participate in Title IV programs. We also assessed the merits of housing a state authorization entity within each.

To accomplish our objectives, we reviewed relevant literature, including federal law and regulations, the *2011–2012 Federal Student Aid Handbook*, and applicable state law and administrative rules. We

reviewed information from the U.S. Department of Education Database of Accredited Postsecondary Institutions and Programs, the National Center of Education Statistics' Integrated Postsecondary Education Data System, and the RWM Vocational Schools Database. We examined reports and other relevant documents from national education institutions such as the State Higher Education Executives Officers, the Western Interstate Commission on Higher Education (WICHE), and the Education Commission of the States. We interviewed appropriate individuals and examined relevant documents from the Department of Commerce and Consumer Affairs, the Department of Education, and the University of Hawai'i. We assessed whether current state laws and rules regarding the authority and responsibilities of identified state agencies, as well as their operational functions, aligned with the core requirements for an authorization entity under federal regulations. We attempted to identify the costs associated with housing an authorization entity.

Our study was performed from June 2012 through October 2012 and conducted according to the Office of the Auditor's *Manual of Guides* and generally accepted government auditing standards. Those standards require that we plan and perform our work to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on the study's objectives.

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Chapter 2

State Authorization Entity Is Needed to Ensure Millions in Student Financial Aid

The State Postsecondary Education Commission was established by the Legislature in 1974 to qualify the State to receive federal student aid funds under the Higher Education Act of 1965 (HEA). Subsequent amendments to the act now require each state to have an entity capable of authorizing institutions to provide postsecondary education programs; statutorily, Hawai‘i’s commission does not have this ability. Although two other Hawai‘i agencies license some institutions that offer postsecondary education programs, none satisfies all current requirements for a state authorization entity. Without such an entity, funding for any program in Hawai‘i that would otherwise be eligible to receive Title IV federal funds—that is, student aid—is in jeopardy. Title IV disbursements exceeded \$280 million in Hawai‘i during FY2011. As noted in Chapter 1, the deadline for states to establish an authorization entity is July 2013.

Hawai‘i is the only state that does not yet have any state authorization entity. We found that a number of other states have similar key components in their authorization entity statutes to address the federal requirements, which could provide guidance in establishing Hawai‘i’s authorization entity and its regulatory framework. We also found that three state agencies could house Hawai‘i’s authorization entity: the University of Hawai‘i (UH), the Department of Commerce and Consumer Affairs (DCCA), and the Department of Education (DOE). Each agency presents potential benefits and challenges. However, we found that UH is the most suitable option, followed by DCCA. The DOE’s lack of commitment to its current licensing program raises concerns about its ability to assume additional responsibilities and is therefore the least suitable option.

Other States’ Authorization Models Share Key Components

In a 2012 report commissioned for Hawai‘i, the National Conference of State Legislatures (NCSL) and the Western Interstate Commission on Higher Education (WICHE) identified key components that should be addressed in any state legislation regarding the authorization of postsecondary institutions. These include: providing a clear purpose for the legislation; defining which institutions require authorization; determining authorization criteria; ensuring a third-party complaints option exists for students; establishing penalties for non-compliance; providing transparent information for students; establishing consumer protection measures; and ensuring flexibility to consider interstate reciprocity agreements.

Provide a clear purpose for the legislation

The first key component is to provide a clear purpose for the legislation. When the Legislature established Hawai‘i’s postsecondary education commission, the purpose of the law was to meet federal requirements in order to qualify the state to receive funds under the Higher Education Act. New federal regulations require institutions to obtain state authorization to be eligible for federal student aid; they also express that one of the purposes in requiring state authorization is to enhance state oversight and better protect students (consumer protection). At least two states directly link the purpose of their authorization laws to consumer protection. Colorado’s authorization law has the most detailed language of the two. Its purpose is:

...to establish high standards for the education of such residents; to prevent misrepresentation, fraud, and collusion in offering such educational programs to the public; to eliminate those practices relative to such programs which are incompatible with the public interest, and to protect, preserve, foster, and encourage the educational programs offered by private educational institutions which meet generally recognized criteria of quality and effectiveness as determined through voluntary accreditation....

Nebraska’s statute, which contains more concise language, makes clear that it applies to specific types of institutions. Nebraska’s statement of purpose for its authorization law is:

...to ensure that minimum standards of operations are met by both private and out-of-state postsecondary institutions operating in Nebraska and to provide for consumer protection for students who enroll in higher education programs in this state.

Define which institutions require authorization

The second key component is to define which institutions will need to seek state authorization in order to operate in Hawai‘i, and which are to be exempt. Various categories of institutions, such as private versus public and in-state versus out-of-state, should be considered. Hawai‘i should incorporate federal criteria into its authorization legislation to define affected institutions; the University of Hawai‘i should be exempted from authorization requirements but permitted to apply if it so chooses (for distance education purposes, as discussed below). In addition, other factors such as physical presence should be defined.

Legislation should incorporate federal criteria to define affected institutions

In identifying which institutions are subject to authorization and which are exempt, Hawai‘i’s authorization legislation should include elements of the federal criteria to ensure only institutions likely to apply for

federal student aid funds are required to seek state authorization. Federal regulations apply only to entities that meet both the following criteria:

- 1) *Institutions of higher education* deemed eligible to participate in programs under the HEA, including institutions of higher education, proprietary institutions of higher education, and postsecondary vocational institutions. A *school* is considered eligible if it offers the appropriate type of eligible program. For an *institution* of higher education to be considered eligible, it must, among other requirements, offer an associate, bachelor, graduate, or professional degree, and be at least a two-year program acceptable for full credit toward a bachelor degree. Proprietary institutions must provide training for gainful employment in a recognized profession and offer programs that range from ten to 15 weeks of instructional time and specific admission standards. Postsecondary vocational institutions have similar criteria to those of proprietary institutions; and
- 2) Once an institution is eligible to *participate* in HEA programs, it must also be eligible to *receive* federal student aid under the HEA. For this it must: a) be legally authorized by the state where the institution is located to offer postsecondary education programs; b) be accredited by a nationally recognized accrediting agency; and c) admit as regular students only individuals with a high school diploma or recognized equivalent, or who are beyond the age of compulsory school attendance in the state where the institution is located.

Exemptions should be identified

Identifying which institutions are *not* required to seek state authorization—that is, exemptions—will also help clarify which institutions *are* subject to state authorization requirements. Any school established by name as an educational institution through a state charter, statute, or constitutional provision as authorized to operate postsecondary educational programs, including programs leading to a degree or certificate, is considered legally authorized by that state, according to federal guidelines.

The University of Hawai‘i system (including its three universities and seven community colleges), established under the State Constitution, is such an institution and therefore does not need to be authorized by the State for the purposes of federal guidelines. The University of Hawai‘i is also the state’s only *public* system of higher education. More than half of states do not require public (and/or publicly supported), in-state, degree-granting institutions to obtain state authorization.

Federal regulations also identify three exemptions from state authorization: 1) schools the federal government has authorized by name to offer postsecondary education programs; 2) schools authorized by name by an Indian tribe as defined in the U.S. Code; and 3) religious institutions, as defined under a state constitution or state law.

Physical presence criteria should be established

To further help determine which institutions require state authorization, state legislation should also establish criteria regarding *physical presence*. Federal guidelines stipulate that, generally, an eligible institution must be located within a state. If a postsecondary institution does not meet a state's standard of being physically located in that state, no authorization is necessary. At least 12 states use physical presence as a criterion for distance education, but how states define physical presence varies.

For example, Arizona requires private postsecondary educational institutions to have a physical presence in the state to trigger a licensing requirement. Physical presence includes a telephone number with an Arizona area code; an address with an Arizona zip code; or an internet URL that originates in Arizona. Nebraska considers whether an institution offers a course that requires students to physically meet in one location more than once during the course term; or has established an administrative office in the state, including office space for staff. In Georgia, institutions offering distance education programs are asked to self-assess whether they meet the state's physical presence criteria and are subject to state authorization, or must produce a legal document declaring they do not meet the criteria and are not subject to authorization.

Determine the criteria for obtaining authorization

The third key component is to establish authorization standards, duration of the authorization, and whether authorization is tied to accreditation. For example, a state may choose to leave assessment of an institution's academic quality and financial viability to one or more outside entities, and focus its own responsibilities on consumer protection measures. At the least, legislation should establish minimum standards and create a fee structure for the authorization program.

Legislation should establish minimum standards

Federal guidelines require that three areas be assessed for an institution to be legally authorized: academic quality, financial viability, and compliance with applicable state laws on consumer protection and other matters of state oversight. The first two areas are already assessed by federal and federally-recognized agencies, namely:

- 1. Academic quality.** Accreditation is meant to ensure that the education provided by a postsecondary institution meets an acceptable level of quality. Accrediting agencies accredit either entire institutions, or programs within institutions; to be eligible to participate in federal student aid programs, an institution must be accredited by an accrediting agency recognized by the U.S. DOE; and
- 2. Financial viability.** To ensure federal student aid programs are administered properly, the U.S. DOE conducts program reviews to confirm schools meet federal student aid requirements for institutional eligibility, financial responsibility, and administrative capability. Schools must provide the U.S. DOE with financial information every year.

The third area that must be addressed for an institution to be legally authorized is left up to each state, namely:

- 3. Consumer protection.** Standards are based on criteria established by each state and should be spelled out in authorization legislation. Standards should include documentation that academic quality has been reviewed and approved by an accreditation agency recognized by the U.S. DOE and that financial viability has been approved by the U.S. DOE. Other possible consumer protection elements are addressed later in this report.

Legislation should create a possible fee structure

Authorization legislation should also address funding for the authorization program. Thirty-seven states and the District of Columbia charge a fee to initiate the authorization process and renew authorization, ranging from \$250 to \$25,000 per year. Only three states do not charge either an initiation or a renewal fee for authorization. Other states charge a variety of additional fees relating to authorization, such as new program evaluation fees; an evaluation committee fee; and a fee in the event a school were to change its name, location, or ownership.

Fees particularly affect institutions that offer distance education programs, and even more so for smaller colleges. A 2011 report by the WICHE Cooperative for Educational Technologies and the University Professional and Continuing Education Association found that, on average, revenue generated by out-of-state students represents 18 percent of an institution's revenue for distance education operations. According to the report, 59 percent of colleges expect they will no longer accept students from some states for distance programs. With fewer students in a state, the authorization cost per student may have a bigger impact on smaller colleges.

If the Legislature wishes to avoid placing a greater financial burden on smaller schools offering distance education programs in Hawai‘i, it could consider implementing a fee structure based on direct and indirect costs for administering the law and a tuition-based formula regarding renewal fees. For example, Colorado’s fees are based on the direct and indirect costs to administer its regulatory act, and fee setting is reviewed annually and implemented through rulemaking. In at least five other states, including Washington and Oklahoma, authorization renewal fees are based on total tuition collected by each school, as reported in schools’ annual financial statements.

Ensure a third-party complaints option exists for students

A fourth key component for state authorizing legislation is establishing a process for complaints and adjudication. Federal regulations require states to enforce applicable state laws and have a process to review and appropriately act on complaints concerning institutions. Policies should describe a specific, clear process by which students can submit complaints about authorized schools and the process by which those complaints will be handled.

According to the U.S. DOE, the intent of requiring a third-party complaints process is to ensure students have access to an independent process. This helps mitigate any conflict of interest schools may have when addressing complaints from students about their own institution. Although regulations require states to “appropriately act” on complaints, states are left to determine what is considered “appropriate” and in line with applicable state laws. States can, for instance, establish a process that receives complaints but allow the authorization entity to decide what, if any, action is merited.

For example, regulations in Florida empower its authorizing entity, a commission, to revoke licenses or impose fines for violation of its rules. The commission may also issue an order to cease and desist from engaging in specific conduct related to a complaint, such as alleged deceptive or misleading advertising. In Colorado, the complaints process can result in an investigation if based on a claim of deceptive trade practices, but only when a student has exhausted all complaints and appeals processes at the institution in question.

In Hawai‘i, there is currently no clear-cut complaints process. The existing State Postsecondary Education Commission, attached to UH, is empowered to establish a complaints process under Section 304A-3153, HRS. The commission did establish such a process in its administrative rules, but those rules are now invalid because the authorizing law was repealed. The DCCA’s Office of Consumer Protection (OCP) is also empowered to receive complaints, and is responsible for pursuing those relating to unfair and deceptive practices under Sections 446E-3 and

480-2, HRS. As such, there could be confusion, once an authorization entity is established, about who is responsible for receiving and addressing student complaints involving alleged unfair and deceptive trade practices.

Establish penalties for non-compliance

State authorization legislation should also include penalties for non-compliance. This aligns with federal requirements that an institution's legal authorization must be subject to adverse action by a state. Currently, violations of Hawai'i's unfair and deceptive practices law may result in civil penalties of \$500 to \$10,000 per violation. However, this punitive measure represents only one aspect of an authorization process. Other penalties, or a broad penalty, will likely be needed for institutions that fail to comply with various elements of Hawai'i's authorization law.

For example, Florida's regulations identify punitive measures that its authorization commission may make regarding violations of its regulations and rules. They establish grounds for imposing disciplinary actions for violations such as operating with an inactive license; attempting to obtain action from the commission by fraudulent misrepresentation, bribery, or through an error of the commission; and false, deceptive, or misleading advertising. Maryland's authorizing commission must consider the seriousness of the deficiency; the harm caused by the deficiency; the good faith of the institution and any corrective actions taken; any history of previous deficiencies; and other pertinent circumstances when imposing any sanctions.

Provide transparent information for students

Both federal regulations and the NCSL/WICHE report stress the need to provide transparency measures in authorization legislation. Federal regulations require institutions to provide documents describing their accreditation and their state, federal, or tribal approval or license, as well as contact information for filing complaints with their accreditors, state authorizing entity, and any other relevant state agency.

Part 668.43, Code of Federal Regulations (CFR), includes a lengthy list of information that institutions must make readily available to students. The information in the CFR is also listed in Florida's regulations. Florida allows all required disclosures to be made in an institution's catalog. In Arizona, the authorization entity itself is subject to information disclosure guidelines. The entity must provide information to the public regarding licensed schools in the state; the meaning of accreditation and which licensed schools are accredited; grievance procedures and how to file student complaints; how to order student records; and guidance on how to become a licensed institution. Arizona uses a website to provide online information and downloadable forms to facilitate public information requests.

According to best practices, the language in licensing statutes tends to be broad, leaving responsibility to licensing entities to fill in details through the administrative rulemaking process. Hawai‘i’s legislation should include transparency measures based on federal guidelines to ensure students receive adequate and truthful information from institutions. It should also empower the authorization entity with rulemaking capability so it may, for instance, address whether any additional information must be disclosed by institutions and whether it will establish its own public disclosure guidelines, like those in Arizona.

Establish consumer protection measures

As noted earlier, an underlying purpose of the federal regulations is to ensure the protection of students (consumers). A common mechanism is to require institutions to provide a surety bond or fee towards a tuition recovery fund. A surety bond helps cover losses suffered by a student if a school fails to satisfy the terms and conditions of a contract for tuition or other instructional fees, or in the event a school were to close its operations.

The Hawai‘i DOE’s licensing program, referenced elsewhere in this report, requires applicants to provide a \$50,000 surety bond, and DCCA’s Board of Barbering and Cosmetology requires a \$10,000 surety or cash bond for its beauty schools. More than 20 states require a surety bond or charge a fee for a student tuition recovery fund. Minnesota also provides alternatives that institutions can provide in lieu of a surety bond. There, schools may supply cash or securities legally purchased by savings banks or trust funds in an aggregate market value equal to the amount of the surety bond. Failure to post and maintain the bond or deposit results in the denial, suspension, or revocation of a school’s license. Hawai‘i’s Legislature may wish to include a surety, cash bond, fee, or similar consumer protection element to the authorization process. Details of how the bond or fee is calculated could be left to the authorizing entity to establish through rulemaking.

Ensure flexibility to consider interstate reciprocity agreements

The final key component recommended by the NCSL/WICHE report is that authorization statutes should enable states to enter reciprocity agreements with each other. Reciprocity agreements enable distance education providers to offer postsecondary education programs in other states without having to seek authorization from each of those states, thus reducing paperwork and costs.

The WICHE has suggested place holder language for Hawai‘i’s legislation that would empower WICHE to enter into arrangements on behalf of Hawai‘i. Eventually, WICHE hopes to expand a reciprocity agreement from the WICHE member states to a regional and then a national agreement. This would relieve institutions from having to

adhere to individual state regulations or pay separate authorization fees, which WICHE believes are more punitive in some states than others.

As noted earlier, the UH system is already legally authorized in Hawai‘i by virtue of its being named in the State Constitution. However, if either UH or the State elected to join the WICHE reciprocity agreement, it would need to operate under the framework of that agreement. The WICHE agreement would require states to accept its criteria for authorizing institutions to operate distance education programs. All states in the agreement would be reviewed at least biennially to ensure they continue to meet all criteria for inclusion.

Although a reciprocity agreement would apply only to distance education, it may cause some Hawai‘i institutions to have to meet two sets of authorization regulations: one for the State and another for whatever is required under the reciprocity agreement. Unless both the state regulations and reciprocity agreement include similar or identical language—regarding authorization, a complaints process, oversight responsibilities, definition of physical presence, and consumer protection measures—it is likely that amendments would be required to either state law or the reciprocity agreement to ensure both are aligned.

It is not clear from WICHE’s proposed reciprocity language whether or not entering into the agreement would require the Legislature to amend Hawai‘i’s laws to align with the WICHE agreement. To avoid having to amend state law whenever WICHE amends its reciprocity agreement, the Legislature should empower the state authorization entity to enter into any reciprocity agreement provided the standards match or exceed Hawai‘i’s authorization requirements.

Estimated number of schools that could seek state authorization

One area not specifically cited in the NLSC/WICHE report is cost. However, estimating the number of potential licensees would help state agencies calculate the cost to operate an authorization program. In 2010, there were 26 institutions within Hawai‘i, including 10 schools associated with the University of Hawai‘i system, eligible to receive federal student aid. Excluding the UH system—which already has legal authorization to offer postsecondary programs in Hawai‘i—in 2010 there were roughly 15 schools in Hawai‘i that would have needed to obtain state authorization to be eligible for federal student aid program funds had such a requirement been in place.

In the absence of more recent data for HEA-eligible institutions in Hawai‘i, we identified institutions in Hawai‘i that met two of the three federal student aid program requirements, namely: 1) recognized

accreditation and 2) a high school diploma or age requirement. Institutions meeting these two requirements only need state authorization to be eligible to participate in federal student aid programs. Although the resulting figure is not definitive (since it is unknown whether these institutions are also considered *eligible institutions* under federal regulations) we estimated that between 21 and 31 institutions in Hawai‘i could have met two of the three eligibility requirements and sought state authorization in order to participate in federal student aid programs in 2012.

Distance education criteria should be considered

Our estimated 21 potential licensees is a relatively small number, which means the cost of authorization per school is likely to be high. According to the PVL licensing administrator, increasing the pool of potential licensees would lower the fees charged by DCCA to each institution. Therefore, the addition of institutions offering distance education courses in Hawai‘i would increase the overall pool of potential licensees, which include in-state institutions, and would reduce DCCA’s fee to each institution for state authorization. Approximately 50 vocational and technical institutions currently offer postsecondary education courses in Hawai‘i via distance education. Appendix A lists those institutions as of August 2012.

The U.S. DOE has said it will not enforce the state authorization requirement regarding distance education; however, institutions must still comply with any state laws pertaining to distance education. A school may not refuse to provide federal student aid to a student simply because he or she is enrolled in a course via distance education; but distance education programs must be accredited by an agency recognized by the U.S. DOE to accredit distance education programs. As noted earlier, the recent federal regulations were designed to encourage states to play a more active role in providing oversight and to help protect students from substandard institutions. Establishing regulations to include distance education would arguably further address the intent of the federal requirements.

The University of Hawai‘i May Be the Most Suitable Agency to House Hawai‘i’s Authorization Entity

As noted in Chapter 1, three state agencies have statutory duties that either involve licensing schools offering postsecondary education programs, or play a role with the State Postsecondary Education Commission: the University of Hawai‘i, Department of Commerce and Consumer Affairs, and Department of Education. We reviewed statutes and rules applicable to each agency’s licensing functions in relation to institutions that may be eligible to participate in federal student aid programs. We also assessed whether these functions could help provide

operational or administrative support for an authorization entity, and identified possible benefits and concerns associated with placing an authorization entity within each of those agencies. There were pros and cons for each agency, but we found the most suitable option is the University of Hawai‘i. Given the DOE’s lack of commitment to its current licensing program, we have concerns about its ability to assume additional responsibilities and therefore regard it as the least suitable option.

Changes to composition of the State Postsecondary Education Commission under the University of Hawai‘i may address conflict of interest concerns

A concern regarding the University of Hawai‘i housing a state authorization program is that it may be unable to ensure an independent, third-party complaints system. Some stakeholders argue the authorization entity might be able to influence the ability of UH’s competitors to participate in federal student aid programs, and could also rule on student grievances about those schools. However, if the commission’s composition were changed—an option supported by the president of WICHE—so the majority of its members do not represent UH, that would ensure the commission can provide a third-party complaints process, thereby satisfying federal requirements.

In 1972, the HEA required states to establish a state postsecondary education commission broadly representative of the various general public, public and private nonprofit, and proprietary postsecondary education institutions within the state. These included community colleges, junior colleges, postsecondary vocational schools, area vocational schools, technical institutes, and four-year institutions of higher education. When the UH president testified before lawmakers in 1974, he admitted the UH Board of Regents does not meet this representative criteria. Changing the membership of the commission would provide an opportunity to better reflect the intent of the HEA.

Aside from concerns about possible conflicts of interest, we identified several benefits to housing Hawai‘i’s authorizing entity within or administratively attached to UH. These are summarized in Exhibit 2.1 and discussed in detail below.

Exhibit 2.1

Possible Benefits and Concerns with the University of Hawai'i

Possible benefits:

1. A State Postsecondary Education Commission is already statutorily established under the University of Hawai'i.
2. Prior administrative rules for the commission provide some guidance regarding student complaints and may reduce drafting time for new rules.
3. As the state's public system of higher education, UH has in-house access to support staff with expertise in postsecondary education.

Possible concern:

1. The UH majority on the commission could unfairly affect its competitors and would not provide an independent, third-party complaints option for students.

Source: Office of the Auditor

Statute already establishes commission but is silent on program funding

Since the State Postsecondary Education Commission is already established in statute, there would be no need to create a new statute for an authorization entity. However, Sections 304A-3151 through 304A-3154, HRS—which establish the commission and its powers—should be reviewed and amended to address areas identified in this report and ensure the composition, powers, and authority of the commission are updated to best fulfill the state authorization requirements under the HEA.

Further, the statute establishing the commission does not address program funding. The university did not respond to our request for a cost analysis, so it is unknown how UH would propose to offset the cost of administering an authorization program. The UH's major funding for operating costs comes from general fund appropriations and the Tuition and Fees Special Fund. The UH could charge fees to institutions seeking authorization, rely on general funds, or use a combination of both. The authorization commission in Georgia, for instance, is funded through a combination of fees and general funds.

Administrative rules would need to be amended

Driven by changes to the HEA's federal regulations in 1994, the Legislature charged the commission with conducting or coordinating reviews of higher education institutions to determine whether institutions taking part in federal student financial aid programs met appropriate standards of educational quality and integrity. The Legislature also empowered the commission to establish and administer procedures for

receiving and responding to complaints from students, faculty, staff, and others concerning higher education institutions in the state. This provision remains in state law, under section 304A-3153, HRS.

There are also old administrative rules for the commission, under Title 20, Hawai‘i Administrative Rules (HAR) (University of Hawai‘i), which are no longer in effect. The rules, which became effective in 1981, delineated when the commission would meet as well as other administrative guidelines. New rules were later adopted pursuant to the 1994 HEA, establishing procedures for the review program and a complaints process. However, in 1996 the federal regulation requiring the review oversight was removed, and Hawai‘i’s statute regarding the review program was subsequently repealed.

Once a statute is repealed, any administrative rules implementing it become invalid. Thus, although rules regarding the commission exist, they are no longer valid. However, they do provide a starting point for future rules and could speed up the lengthy rulemaking process.

University has access to postsecondary education expertise

As previously noted, the UH system includes three universities and seven community colleges. It likely has access to staff with sufficient expertise in postsecondary education who could provide adequate support to an authorization entity.

Department of Commerce and Consumer Affairs has licensing experience, but lacks education expertise

The Department of Commerce and Consumer Affairs could also potentially accommodate a state authorization program, but its lack of experience in postsecondary education and the mandate for self-sustaining programs could pose significant challenges. The DCCA’s major services include registration and licensing; examination for financial health and soundness; complaint processing; and consumer protection and education. Each of these could apply to various aspects of the postsecondary authorization process. For example,

- To obtain state authorization, schools established as business institutions rather than educational institutions would need to be *licensed* to offer postsecondary education programs;
- To participate in federal student aid programs, institutions must demonstrate they are *financially responsible*;
- Federal regulations require that states have a process to review and appropriately act on *complaints* concerning postsecondary educational entities; and

- One of the underlying purposes of the federal regulations is to provide a *consumer protection* element for students.

However, although DCCA’s operational infrastructure presents some potential benefits to placing Hawai‘i’s authorization entity within the agency, its ability to access staff with expertise in postsecondary education programs and institutions pales in comparison with the University of Hawai‘i. Exhibit 2.2 summarizes the potential benefits and concerns regarding placing Hawai‘i’s authorization entity within DCCA, which are discussed further below.

Exhibit 2.2

Possible Benefits and Concerns with the Department of Commerce and Consumer Affairs

<p>Possible benefits:</p> <ol style="list-style-type: none">1. The department has significant licensing experience and oversees regulatory activities of dozens of boards and commissions.2. The department houses the Regulated Industries Complaints Office (RICO), which protects the public from unlicensed activities.
<p>Possible concerns:</p> <ol style="list-style-type: none">1. The department licenses only beauty schools, so experience regulating educational institutions is limited.2. The Regulated Industries Complaints Office lacks staff experienced in dealing with complaints related to matters involving schools.3. Licensing programs within DCCA are required to be self-sustaining; fees must support the entire cost of the authorization entity and its operations4. Current program for licensing beauty schools would likely not fulfill the federal state authorization requirement.

Source: Office of the Auditor

DCCA’s licensing experience with schools is limited

The Board of Barbering and Cosmetology had nearly 11,000 licensees under its jurisdiction as of July 2012. Of the ten beauty schools licensed by DCCA for 2012, only three participated in federal student aid programs under the HEA in FY2011. The DCCA’s experience with licensing is significant; however, its experience with licensing schools is very limited. The Professional and Vocational Licensing (PVL) Division at DCCA is responsible for more than 20 professional boards and commissions, including the Board of Barbering and Cosmetology, which oversees the licensing of beauty schools. However, beauty schools are the only schools licensed by DCCA.

The board’s administrative rules include requirements for application, curricula, school facilities, equipment, and enrollment, but lack a number of necessary elements to fulfill the state authorization requirement, such as accreditation by a recognized agency and student information disclosures. Given the narrow scope of schools that the PVL licenses, and given the limited number of those that qualified for federal student aid under the HEA, licensing staff at DCCA do not have extensive experience with institutions of higher education. The PVL administrator also expressed concern about this staff deficiency.

As to whether the licensing function performed by DCCA would satisfy the federal authorization requirement, according to the U.S. DOE, if an entity is a business and not an educational institution, the language of the license or certificate must clearly distinguish that the institution is being licensed to offer postsecondary education programs, given that vocational programs can be offered at the secondary (high school) level. Neither state law nor PVL-issued licenses specifically allow an entity to offer postsecondary education programs. Thus, licenses issued to beauty schools by DCCA’s Barbering and Cosmetology board would not fulfill the federal authorization requirements. As a result, beauty schools wishing to participate in federal student aid programs would need to obtain both a license under DCCA criteria and state authorization under separate criteria.

DCCA licensing programs must be self-sustaining

By statute, all licensing programs within DCCA must be self-supporting. Therefore, any fees for postsecondary authorization regulation would need to cover the costs of the program. The PVL provided cost analyses of a general program including start-up costs and annual renewal costs. Exhibit 2.3 summarizes these estimates.

**Exhibit 2.3
Estimated Costs of Operating an Authorization Program Within DCCA**

	20–30 licensees	45–60 licensees
Start-up costs, per institution	\$5,700 to \$8,500	\$2,800 to \$3,800
Annual renewal, per institution	\$5,400 to \$8,100	\$2,700 to \$3,600

Source: Office of the Auditor, based on DCCA information

The DCCA’s cost estimates are based on parameters we provided, not a drafted bill. The PVL licensing administrator agreed that the cost analysis could change once the details in a drafted bill are known. The University of Hawai‘i and the Department of Education did not respond to our request for cost analyses.

Consumer complaints offices are established but lack education-related experience

The DCCA has existing infrastructure to receive and address consumer complaints, in the form of both its Office of Consumer Protection (OCP) and its Regulated Industries Complaints Office (RICO). However, neither office has expertise in postsecondary education issues.

The OCP investigates consumer complaints of unfair or deceptive trade practices in advertising, refunds, credit practices, and charitable solicitation. It promotes fair and honest business practices by investigating alleged violations of consumer protection laws. It also collects, compiles, and reviews information on consumer complaints to determine whether they merit investigation. The RICO investigates and prosecutes complaints against professionals licensed by PVL and protects the public from unlicensed providers. The RICO's Consumer Resource Center serves as a "one-stop shop" for people who have questions about DCCA or want to file a complaint. The center receives complaints on behalf of both RICO and OCP.

However, RICO's responsibilities are limited to professions that fall under the jurisdiction of DCCA. As noted previously, the only schools licensed by DCCA are beauty schools. According to DCCA's complaints and enforcement officer, intake investigators may not have the expertise to properly assess complaints relating to institutional matters involving schools. It would be "foreign" to them and demand a "steep learning curve." Still, the officer was open to the possibility that the Consumer Resource Center could serve as an entry point for student complainants, who could then be redirected to the authorization entity.

Department of Education's licensing program lacks staff and expertise to handle additional authorization responsibilities

Hawai'i's Department of Education administers a school licensing program. However, the department has demonstrated a lack of commitment to the program, which raises concerns about its ability to assume greater licensing responsibilities. Section 302A-425, HRS, requires private trade, vocational, and technical schools to be licensed by DOE in order to operate in Hawai'i. The purpose of the regulation is to protect consumers against practices by such schools that are false, deceptive, misleading, or unfair, and to ensure the educational quality at these schools. For the licensing period 2011–2013, the department has licensed 26 schools. Of those, at least five participated in federal student aid programs under the HEA during FY2011. However, deficiencies in staffing and commitment to the department's licensing program identified by our office ten years ago persist today. Exhibit 2.4 summarizes the possible benefits and concerns to placing Hawai'i's authorization entity within the DOE, which are discussed further below.

Exhibit 2.4

Possible Benefits and Concerns with the Department of Education

<p>Possible benefits:</p> <ol style="list-style-type: none"> 1. The department is empowered by statute to license private trade, vocational, and technical schools. 2. Licensing rules for schools include a complaints process, consumer protection measures, and transparency requirements.
<p>Possible concerns:</p> <ol style="list-style-type: none"> 1. The department's lack of commitment to the licensing program continues to be troubling. 2. Lack of resources hinders the program's ability to adhere to all administrative rule requirements and to respond to public complaints. 3. Staff who administer the program lack expertise in postsecondary education programs.

Source: Office of the Auditor

DOE's commitment to its licensing program is questionable

In 2002, our Report No. 02-08, *A Study on the Licensing of Private Trade, Vocational, and Technical Schools*, found that the DOE had failed to allocate necessary resources to properly administer its licensing program. Only two positions were assigned to administer the program, and on a part-time basis. We noted a lack of commitment resulted in a failure to assure students of proprietary schools that their financial interests were protected and that they were receiving a quality education. The DOE also lacked investigative staff; had no full-time staff dedicated to its licensing program; expressed that it did not want the responsibility of administering the licensing program; and said it did not have the expertise to license and regulate proprietary schools.

Currently, DOE's licensing program is administered by one staff, an educational specialist II, who has been performing this duty since 2007. However, she estimates she spends only 20 percent of her time performing this function. A casual employee, who works 17 hours a week, also supports the licensing program on a part-time basis. The educational specialist admitted her experience is primarily with grades K-12, not postsecondary education. She also said the casual worker does not have any experience with licensing or postsecondary education programs. The educational specialist added that her superiors remind her that her duties regarding the licensing program are not a priority. We therefore reiterate the findings in our 2002 report regarding DOE's lack of commitment to its licensing program.

Licensing rules provide clear guidance

The DOE has administrative rules for its licensing program. The educational specialist also told us the program's rules provide her with sufficient guidance to administer the program despite her limited expertise regarding postsecondary education.

The department's forms for ensuring schools follow regulations regarding licensing applications, renewals, and on-site visits are closely tied to its administrative rules. Those rules require schools to submit specific documents with their applications, and to update their catalogues to provide prospective students with essential information about the school and its courses of instruction. They also require DOE to have a process for students to file formal complaints against schools, and a hearings process by which to revoke or suspend licenses for failure to comply with rules.

However, based on comments by staff who administer the program, DOE's forms address many of the general requirements in administrative rules and provide the means for staff with limited postsecondary education experience to ensure regulations in the licensing program are followed.

Lack of resources hinders DOE's ability to perform oversight

The educational specialist responsible for DOE's licensing program said she also performs its monitoring functions, which includes on-site visits. However, she said she is unable to conduct on-site visits to every school during the course of a year, and that she does not perform any on-site visits prior to issuing licenses. According to administrative rules, schools must be inspected *prior* to issuing a license. The educational specialist commented that if there were more staff, she would conduct pre-licensing visits as well as more post-licensing visits. The specialist also stated that due to the shortage of staff and time, she is also unable to investigate complaints about unlicensed schools. Given this, DOE demonstrates a lack of commitment to its licensing program, raising concerns about its ability to effectively meet the additional responsibilities that would be required to support a state authorization entity.

Conclusion

The U.S. DOE has not decided what action it will take regarding institutions that fail to meet state authorization requirements by July 2013. Fines, federal student loan program ineligibility—which could jeopardize more than \$280 million in student aid funding in Hawai'i—or extending the deadline are all possible options. However, if the Legislature wishes to demonstrate a good-faith attempt to help institutions comply with the federal regulations, then it needs to identify

and empower a state entity to authorize institutions to operate and offer postsecondary education programs in Hawai‘i.

With an existing statutory vehicle and access to postsecondary education expertise, the University of Hawai‘i is the most suitable option for housing an authorization entity. The State Postsecondary Education Commission attached to UH could serve as the authorizing entity, but its membership should be amended to include representatives from institutions identified in the Higher Education Act. This would enable the commission to provide an independent, third-party complaints process as mandated by federal regulations and mitigate possible conflicts of interest. Support staff for the commission should be experienced in postsecondary education matters. A complaints process already described in the commission’s defunct administrative rules could help accelerate the drafting of new rules. If the Legislature decides UH is not suitable to house an authorization entity, the next preferable option is the Department of Commerce and Consumer Affairs, followed by the Department of Education.

In accordance with federal guidelines, in-state, private academic, proprietary, and vocational institutions should be made subject to Hawai‘i’s authorization requirements. Including out-of-state distance education providers is not mandated by federal regulations, but would likely reduce fees to each institution for the authorization program.

Recommendations

1. In order to meet federal requirements under the Higher Education Act of 1965, the Legislature should enact legislation establishing a postsecondary education authorization entity in Hawai‘i. In doing so, the Legislature should refer to applicable sections of Parts 600, 602, and 668 of the Code of Federal Regulations for guidance, and it should address key areas discussed in this report. Specifically, the authorization law should:
 - a. In relation to **purpose**, include the need to:
 - i. Fulfill federal requirements under the Higher Education Act of 1965; and
 - ii. Ensure educational quality and consumer protection for students and prospective students.
 - b. In relation to **applicability**,
 - i. Consider including elements of the federal criteria in state legislation in order to ensure only those

- institutions that are likely to apply for federal student aid program funds are subject to state authorization requirements;
- ii. Include language applying the law to private, in-state institutions that intend to be eligible to participate in federal Title IV programs in accordance with guidelines provided in the *Federal Student Aid Handbook* and Code of Federal Regulations;
 - iii. Consider defining **physical presence** to help determine which institutions are subject to state authorization requirements. Such criteria may be broadly or narrowly defined; and
 - iv. Consider requiring **distance education providers** to seek authorization in order to operate in Hawai‘i.
- c. In relation to **exemptions**, consider exempting from state authorization requirements:
- i. The University of Hawai‘i, but allow it and its colleges the flexibility to seek authorization if they so choose; and
 - ii. Schools the federal government has authorized by name to offer postsecondary education programs, schools authorized by an Indian tribe (as defined in the U.S. Code), and/or religious institutions.
- d. In relation to **consumer protection measures**, establish consumer protection measures and consider including a requirement for a surety or cash bond, or a fee, for a tuition recovery fund or similar consumer protection element as part of the authorization process;
- e. In relation to **funding**, address how the authorization program is to be funded. If the Legislature wishes to avoid placing a greater financial burden on smaller schools offering distance education programs in Hawai‘i, it could consider implementing a fee structure based on direct and indirect costs for administering the law and a tuition-based formula for renewal fees;
- f. In relation to a **complaints process**,

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Appendix A

Estimated Number of Institutions Offering Distance Education Courses in Hawai'i

No.	Institutions Offering Distance Education Courses in Hawai'i
1.	American InterContinental University Online
2.	Anna Maria College**
3.	Argosy University Online
4.	Ashford University
5.	Ashworth College
6.	Baker College Online
7.	Beacon Hill Career High School**
8.	Bridge (TEFL)
9.	Bryan University
10.	Bryant and Stratton College Online
11.	California State University–Monterey Bay**
12.	Central Christian College of Kansas Online
13.	Chamberlain College of Nursing
14.	Concordia University Online
15.	DeVry University
16.	Empowered UCLA Extension
17.	Everest University Online
18.	Full Sail University–Online
19.	George Mason University**
20.	Georgetown University School of Nursing & Health Studies**
21.	Grand Canyon University
22.	International Academy of Design & Technology Online
23.	ITT–Online
24.	Jewelry & Watch Repair School of New England*
25.	Jones International University
26.	Keiser University
27.	Kendall College Early Childhood Education Program
28.	Northcentral University
29.	Penn Foster Schools
30.	Post University
31.	Purdue University
32.	Regis University
33.	Remington College
34.	Saint Peter's College**
35.	Saint Xavier University
36.	South University Online
37.	Stratford Career Institute
38.	Strayer University
39.	The College Network
40.	The University of Liverpool**
41.	Ultimate Medical Academy Online
42.	UNC Kenan-Flagler School of Business
43.	University of Phoenix
44.	University of St. Mary
45.	University of the Rockies
46.	USC Rossier School of Education

No.	Institutions Offering Distance Education Courses in Hawai'i
47.	USC School of Social Work
48.	Virginia College
49.	Walden University
50.	Western Governors University
51.	Western International University

* Correspondence courses

** Office of the Auditor could not confirm or contact

Source: RWM Vocational Schools Database

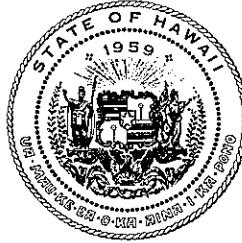
Responses of the Affected Agencies

Comments on Agency Responses

On December 7, 2012 we transmitted a draft of this report to the University of Hawai‘i, Department of Commerce and Consumer Affairs, and the Department of Education. A copy of the transmittal letter to the University of Hawai‘i Board of Regents is included as Attachment 1. Similar transmittal letters were sent to the departments of Commerce and Consumer Affairs and Education. Copies of the responses from the University of Hawai‘i and the departments of Commerce and Consumer Affairs and Education are also included as attachments.

The Department of Commerce and Consumer Affairs and Department of Education supported our conclusions and recommendations. The University raised concerns about its ability to implement our primary recommendation to house Hawai‘i’s authorizing entity within the existing State Postsecondary Education Commission attached to the university, and about our specific recommendation regarding mitigating possible conflict-of-interest concerns.

STATE OF HAWAII
OFFICE OF THE AUDITOR
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

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December 7, 2012

COPY

The Honorable Eric Martinson
Chairman, University of Hawai'i Board of Regents
2444 Dole Street
Bachman Hall, Room 209
Honolulu, Hawai'i 96822

Dear Chairman Martinson:

Enclosed for your information are 15 copies, numbered 6 to 20, of our confidential draft report, *Study of the Higher Education Act*. We ask that you telephone us by Tuesday, December 11, 2012, on whether or not you intend to comment on our recommendations. Please distribute the copies to the members of the board. If you wish your comments to be included in the report, please submit them no later than Friday, December 14, 2012.

The Department of Commerce and Consumer Affairs, Board of Education, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this confidential draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

M.R.C. Greenwood, Ph.D.
President



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2012 DEC 18 AM 8:01

December 14, 2012

OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor, Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

Thank you for the draft copy of the report, *Study of the Higher Education Act*, numbered 21, for our review and comments.

We would specifically like to comment on your recommendation that the University of Hawaii (UH) may be the most suitable agency to house Hawaii's authorization of postsecondary institutions. While it is true that the State Postsecondary Education Commission is statutorily established at UH, it is an entity that is administratively attached with no funding, no staffing and, in essence, no daily or regular function to perform. The statute establishing the Commission and the old administrative rules established decades ago based on federal and state laws which no longer exist are not sufficient reasons to place the authorization function at UH.

We would propose to add the following to your list of possible concerns:

1. UH lacks licensing experience or oversight of regulatory activities of entities, education or otherwise.
2. UH lacks resources, staffing or infrastructure in the State Postsecondary Education Commission.
3. UH lacks experience or knowledge of non-public or vocational or trade schools. Both DCCA and Hawaii DOE have had significant experience in these types of institutions.
4. The report recommends changing the Commission's composition so that the majority of commissioners do not represent UH to avoid a conflict of interest. However, the perception of non-UH institutions that the Commission, administratively attached to UH, is not an independent, third-party entity able to adjudicate complaints, may remain.

Thank you for the opportunity to comment on the report

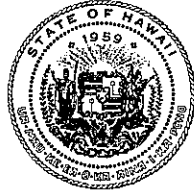
Sincerely,

M.R.C. Greenwood

2444 Dole Street, Bachman Hall
Honolulu, Hawaii 96822
Telephone: (808) 956-8207
Fax: (808) 956-5286

Email: mrcgreenwood@hawaii.edu

An Equal Opportunity/Affirmative Action Institution



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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P.O. Box 541
HONOLULU, HAWAII 96809
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www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

December 12, 2012

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2012 DEC 13 AM 10:14

OFF. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion M. Higa
State Auditor
Office of the Auditor
465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917

Dear Ms. Higa:

The Department of Commerce and Consumer Affairs ("DCCA") appreciates the opportunity to comment on Office of the Auditor's draft report on the "Study of the Higher Education Act."

We agree with the Study's findings that our inexperience with postsecondary schools and the mandate that DCCA programs be self-sustaining, would pose significant challenges to the successful implementation of such a program by the DCCA. We also agree that DCCA is not the proper statutory vehicle and nor do we have access to postsecondary education expertise for implementation, oversight and enforcement required to effectuate the statutory requirement that an institution of high education must be legally authorized in a state.

I would personally like to thank your staff for their hard work and to wish you the very best on your upcoming retirement. Your years of service are greatly appreciated!

Sincerely,

Keali'i S. Lopez
Director

c: Daria Loy-Goto, CEO
Celia Suzuki, Licensing Administrator

NEIL ABERCROMBIE
GOVERNOR

KATHRYN S. MATAYOSHI
SUPERINTENDENT



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

OFFICE OF THE SUPERINTENDENT

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December 13, 2012

2012 DEC 14 AM 8:30

OFC. OF THE AUDITOR
STATE OF HAWAII

Ms. Marion Higa
State Auditor
Office of the Auditor
465 South King Street, Room 500
Honolulu, Hawaii 96813

Dear Ms. Higa:

The Hawaii State Department of Education (DOE) concurs with the state auditor's findings and recommendations. An authorization entity must possess post-secondary expertise and commit financial resources to properly evaluate private, trade, and vocational institutions as well as post-secondary distance education programs.

The DOE is focused on delivering quality K-12 instruction and ensuring our graduates are prepared for success in college and careers. Since the inception of the program, the DOE has been unable to fulfill the baseline personnel and budgetary needs for a viable post-secondary authorization entity.

Thank you for the opportunity to provide our comments on the *Study of Higher Education Act* audit.

Very truly yours,

Kathryn S. Matayoshi
Superintendent

KSM:sg

c: Office of Curriculum, Instruction and Student Support